

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

EDMONDS GREENERY HOMEOWNERS  
ASSOCIATION, a Washington Non-Profit  
Corporation,

Plaintiff,

v.

EAGLE WEST INSURANCE COMPANY, a  
California Corporation; and DOE INSURANCE  
COMPANIES 1-10,

Defendants.

NO.

COMPLAINT FOR DECLARATORY  
RELIEF, BREACH OF CONTRACT, BAD  
FAITH, CONSUMER PROTECTION ACT  
VIOLATIONS, AND DAMAGES

JURY DEMAND

The Edmonds Greenery Homeowners Association (the “Association”) alleges as follows:

**I. INTRODUCTION**

1.1 This is an action for declaratory judgment (including money damages), breach of contract, bad faith, Consumer Protection Act (“CPA”) violations, and money damages seeking:

(A) A declaration of the rights, duties and liabilities of the parties with respect to certain controverted issues under Eagle West Insurance Company’s (“EWIC”) policies issued to the Association. The Association is seeking a ruling that each of EWIC’s policies provide coverage for hidden damage at the Edmonds Greenery condominium complex and that EWIC is liable for money damages for the cost of repairing hidden damage at the Edmonds Greenery condominium complex.

(B) Attorneys’ fees (including expert witness fees) and costs.

COMPLAINT FOR DECLARATORY RELIEF,  
BREACH OF CONTRACT, BAD FAITH,  
CONSUMER PROTECTION ACT  
VIOLATIONS, AND DAMAGES - 1

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(C) Money damages for the cost of repairing covered damage, bad faith, breach of contract, and violations of the CPA.

(D) Any other relief the Court deems just and equitable.

## **II. PARTIES AND INSURANCE CONTRACTS**

2.1 The Association. The Edmonds Greenery Homeowners Association is an association located in Edmonds, Washington. The Edmonds Greenery Condominium consists of three buildings with thirty-eight (38) residential units. The Edmonds Greenery Condominium is located in Edmonds, Washington.

2.2 EWIC. Eagle West Insurance Company (“EWIC”) is domiciled in California with its principal place of business in Monterey, California. EWIC issued insurance policies to the Association including but not limited to Policy No. 25-BOP-2-070000682 (in effect from at least March 15, 2017 to March 15, 2021). The Association is seeking coverage against all EWIC policies issued to the Association.

2.3 Doe Insurance Companies 1–10. Doe Insurance Companies 1–10 are currently unidentified entities who, on information and belief, sold insurance policies to the Association that identify the Edmonds Greenery Condominium complex as covered property.

2.4 Edmonds Greenery Insurers. EWIC and Doe Insurance Companies 1–10 shall be collectively referred to as the “Edmonds Greenery Insurers.”

2.5 Edmonds Greenery Policies. The policies issued to the Association by the Edmonds Greenery Insurers shall be collectively referred to as the “Edmonds Greenery Policies.”

## **III. JURISDICTION AND VENUE**

3.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

3.2 Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) as the Edmonds Greenery Insurers marketed and sold insurance to the Association in Snohomish County; a

substantial part of the events giving rise to the claim, including the breach of contract, occurred in Snohomish County; and the insured condominium building is located in Snohomish County.

#### IV. FACTS

4.1 Incorporation by Reference. The Association re-alleges the allegations of paragraphs 1.1 through 3.2, above, as if fully set forth herein.

4.2 Tender to Edmonds Greenery Insurers. On March 6, 2020, the Association tendered its claim to EWIC for hidden recently discovered at the Edmonds Greenery condominium complex.

4.3 Joint Intrusive Investigation. The Association hired an investigative firm, Dimensional Building Consultants (“DBC”), to investigate the extent of damage at the Edmonds Greenery Condominium complex. DBC in conjunction with the Association’s historical insurers, including EWIC, performed a Joint Intrusive Investigation at the Edmonds Greenery condominium complex. The Association understands from DBC that the investigation revealed extensive hidden damage to sheathing and framing throughout the property attributable to long term, incremental and progressive water damage. The Association’s further understanding from its experts that the cost to repair these hidden damages exceeds the jurisdictional limit of \$75,000.

4.4 EWIC’s Denial of the Association’s Claim. On June 15, 2021, EWIC unreasonably denied coverage for the Association’s insurance claim.

#### V. FIRST CLAIM AGAINST THE EDMONDS GREENERY INSURERS: DECLARATORY RELIEF THAT THE EDMONDS GREENERY POLICIES PROVIDE COVERAGE

5.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the allegations of paragraphs 1.1 through 4.4, above, as if fully set forth herein.

5.2 Declaratory Relief. The Association seeks declaratory relief from the Court in the form of determinations regarding the following disputed issues:

1 (A) The Edmonds Greenery Policies cover the hidden damage to exterior building  
2 components including but not limited to exterior sheathing and framing at the Edmonds Greenery  
3 condominium complex.

4 (B) No exclusions, conditions, or limitations bar coverage under the Edmonds Greenery  
5 Policies.

6 (C) The loss or damage to Edmonds Greenery condominium complex was incremental  
7 and progressive. New damage commenced during each year of the Edmonds Greenery Policies.

8 (D) As a result, the Edmonds Greenery Policies cover the cost of investigating and  
9 repairing the hidden damage to exterior building components including but not limited to exterior  
10 sheathing and framing at the Edmonds Greenery condominium complex.

11 **VI. SECOND CLAIM: AGAINST EWIC FOR**  
**BREACH OF CONTRACT**

12 6.1 Incorporation. The Association re-alleges and incorporates by reference the allegations of  
13 paragraphs 1.1 through 5.2, above, as if fully set forth herein.

14 6.2 EWIC has contractual duties under the terms of its policy and/or policies to pay the cost of  
15 investigating and repairing the covered damage to the Edmonds Greenery condominium complex.

16 6.3 EWIC breached its contractual duties by wrongfully denying coverage on June 15, 2021,  
17 and by failing to pay the cost of repairing the covered damage to the Edmonds Greenery  
18 condominium complex.

19 6.4 As a direct and proximate result of EWIC's breach of its contractual duties the  
20 Association has been damaged in an amount to be proven at trial.

21 6.5 Additional Damages. As a direct and proximate result of EWIC's breach of its contractual  
22 duties, the Association has been forced to incur attorneys' fees, expert costs, investigation costs  
23 and other expenses in order to prosecute this action, the sole purpose of which is to obtain the  
24 benefits of the Association's insurance contracts.

**VII. THIRD CLAIM: AGAINST EWIC FOR INSURANCE BAD FAITH**

7.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the allegations of paragraphs 1.1 through 6.5, above, as if fully set forth herein.

7.2 The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. RCW 48.01.030. An insurer has a duty to act in good faith. This duty requires an insurer to deal fairly with its insured. The insurer must give equal consideration to its insured's interest and its own interest and must not engage in any action that demonstrates a greater concern for its own financial interest than its insured's financial risk. An insurer who does not deal fairly with its insurer, or who does not give equal consideration to its insured's interest, fails to act in good faith.

7.3 The duty of good faith requires an insurer to conduct a reasonable investigation before refusing to pay a claim submitted by its insured. An insurer must also have a reasonable justification before refusing to pay a claim. An insurer who refuses to pay a claim, without conducting a reasonable investigation or without having a reasonable justification, fails to act in good faith.

7.4 EWIC had a duty to investigate, evaluate, and decide the Association's claim in good faith. EWIC breached its duty by unreasonably investigating, evaluating, and/or denying the claim by, among other things: (1) failing to acknowledge that weather conditions such as rain or wind-driven rain were one of the causes of the hidden damage at the Edmonds Greenery condominium complex; (2) failing to acknowledge that weather conditions such as rain and wind-driven rain are covered causes of loss under its policy(s); (3) failing to acknowledge that there is coverage under its policy(s) when damage results from a concurrent combination of rain and any excluded peril; (4) failing to acknowledge that there is coverage under the resulting loss clause in its policy(s); and (5) failing to define terms in the EWIC policy pursuant to the plain meaning of the terms. In additional EWIC unreasonably delayed in coming to a coverage determination.

7.5 A violation, if any, of one or more of the Washington claim handling standards set forth below is a breach of the duty of good faith, an unfair method of competition, an unfair or deceptive act or practice in the business of insurance, and a breach of the insurance contract. EWIC's conduct violated Washington claim handling standards:

- Which require it to fully disclose all pertinent coverages.
- Which prohibit misrepresentations regarding relevant facts (e.g. the cause of damages) or coverage.
- Which prohibit the practice of refusing to pay claims without conducting a reasonable investigation.
- Which require EWIC to provide a reasonable explanation of the relevant facts, law, and policy language and how its policy language supported a denial of the Association's claim.
- Which require EWIC to adopt and implement reasonable standards for the prompt investigation of claims.

7.6 EWIC's actions and omissions, including but not limited to its denial of coverage, were unreasonable, unfounded, and frivolous under the circumstances and constitute a breach of EWIC's duty of good faith. As a direct and proximate result of the breaches, the Association has been damaged in an amount to be proven at trial.

#### **VIII. FOURTH CLAIM: AGAINST EWIC FOR VIOLATIONS OF THE CONSUMER PROTECTION ACT**

8.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the allegations of paragraphs 1.1 through 7.6, above, as if fully set forth herein.

8.2 Violations of claims handling standards provided under the WAC are per se CPA violations. On information and belief, the conduct of EWIC was deceptive, impacted the public, and had the capacity to deceive. The Association is a consumer. As a direct and proximate result of EWIC's violations, the Association has been damaged in an amount to be proven at trial. The Association is

entitled to damages, CPA penalties of up to \$25,000.00 per violation, and attorneys' fees under the CPA.

### IX. PRAYER FOR RELIEF

WHEREFORE, the Association prays for judgment as follows:

9.1 Declaratory Judgment Regarding Coverage. A declaratory judgment that the Edmonds Greenery Policies provide coverage as described herein.

9.2 Money Damages. For money damages against each of the Edmonds Greenery Insurers for the cost of investigating and repairing hidden damage at the Edmonds Greenery condominium complex in an amount to be proven at trial, as well as money damages against EWIC for breach of the duty of good faith in an amount to be proven at trial.

9.3 Attorneys' Fees and Costs of Suit. For reasonable attorneys' fees (including expert fees). *See Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), and RCW 48.30.015.

9.4 CPA Penalties. For CPA penalties against EWIC of up to \$25,000 per violation.

9.5 Other Relief. For such other and further relief as the Court deems just and equitable.

### X DEMAND FOR JURY TRIAL

10.1 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Association demands trial by jury in this action of all issues so triable.

Dates the 25<sup>th</sup> day of January, 2022.

**STEIN, SUDWEEKS & STEIN, PLLC**

/s/ Daniel J. Stein

/s/ Justin D. Sudweeks

/s/ Jerry H. Stein

/s/ Cortney M. Feniello

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